



Michael O. Leavitt
Governor
Douglas C. Borba
Executive Director
Ric Campbell
Division Director

DEPARTMENT OF COMMERCE

Internet Address: <http://www.commerce.state.ut.us>

DIVISION OF PUBLIC UTILITIES

Heber M. Wells Building, 4th Floor
160 East 300 South, Box 146751
Salt Lake City, Utah 84114-6751
Telephone: (801) 530-6651
Fax: (801) 530-6652 or (801) 530-6650

DOCKET FILE COPY ORIGINAL

RECEIVED

DEC 16 1996

COMM. DIV.

VIA UPS NEXT DAY AIR

December 13, 1996


Office of the Secretary
Federal Communications Commission
Room 222
1919 M. Street, NW
Washington, D.C. 20554

Re: CC Docket No. 96-45

Dear Mr./Ms. Secretary:

Please find enclosed an original and four copies of the comments of the State of Utah Public Service Commission and Division of Public Utilities regarding the Universal Service Recommendation in this Docket.

Sincerely,


Ingo Henningsen
Technical Consultant



No. of Copies rec'd
LIST ABOVE

047

MICHAEL L. GINSBERG- (#4516)
Assistant Attorney General
JAN GRAHAM
Attorney General
Attorney for the Utah Public Service Commission &
the Utah Division of Public Utilities
160 East 300 South fifth floor
P.O.Box 140857
Salt Lake City, Utah 84114-0857
Telephone: (801) 366-0335
Fax: (801) 366-0352

DO NOT FILE COPY ORIGINAL

RECEIVED
DEC 16 1996
FEDERAL COMMUNICATIONS COMMISSION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
The Joint board on Universal Service) CC Docket No. 96-45
)
)

**COMMENTS
OF
STATE OF UTAH PUBLIC SERVICE COMMISSION
STATE OF UTAH DIVISION OF PUBLIC UTILITIES
(hereby referred to as the State of Utah)**

In response to the "Common Carrier Bureau's request for Comment on Universal Service Recommended Decision" the State of Utah, hereby respectfully provides the following comments:

1. IDENTIFICATION OF PETITIONERS

The Utah Public Service Commission is a "State commission" as that term is defined in Section 3(41) of the Communications Act of 1934, 47U.S.C. sec 153(41), and is the state agency vested with jurisdiction to regulate telephone corporations in the state of Utah. The Utah Division of Public Utilities is a state agency within the Department of Commerce created pursuant to U.C.A.54-4a-1. The Division of Public Utilities has the authority to commence original proceedings, file complaints, appear as a party, commence appeals, and otherwise advocate policy recommendations before the Public Service Commission and agencies of the Federal government. The Division of Public Utilities is required to act in the public interest and provide the Public Service Commission with objective and comprehensive information, evidence, and recommendations.

2. SPECIFIC COMMENTS

THE FCC SHOULD NOT BASE CONTRIBUTIONS FOR HIGH COST AND LOW-INCOME SUPPORT MECHANISMS ON INTRASTATE REVENUES.

On November 8, 1996, the Federal-State Joint Board issued its recommended decision in this docket. The Joint Board recommended imposing a uniform charge on the net revenues of interstate telecommunications carriers. However, the Joint Board members were not all able to agree on the revenue base to be used for the collection of this charge, specifically whether the Universal Service Fund (USF) charge should be based on the interstate revenues of interstate carriers or on the combined total interstate and intrastate revenues of such carriers.¹ It is the

¹ Commissioners Kenneth McClure and Laska Schoenfelder dissented on the issue of including intrastate revenues in the calculation of carrier contributions.

position of the State of Utah that the interstate USF, including the charges to support schools, libraries, and rural health care providers, be funded strictly through a charge on interstate revenues only.

It is the position of the State of Utah that it is beyond the legal jurisdiction of the FCC to include intrastate revenues in the determination of contributions to the Federal USF. The State of Utah agrees with the statement of Commissioner Schoenfelder:

The jurisdiction between the Commission (FCC) and the states is distinct. The FCC possesses authority to assess interstate revenues, while the state commissions have authority to utilize intrastate revenues. To recommend that the FCC utilize intrastate telecommunications revenues is certainly beyond the scope of its jurisdiction.²

The 1996 telecommunications Act does not grant the FCC any specific authority to base charges on intrastate revenues. Section 254(d) states that “Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis. . . . There is no mention in this or any other section of the 1996 act of the FCC’s authority to utilize intrastate revenues to support the interstate USF. Section 601© states that “this Act and the amendments made by this Act shall not be construed to modify,

²Separate statement of Commissioner Laska Schoenfelder dissenting in part, page G-6.

impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments. It therefore, appears clear that the 1996 Act did not grant the FCC any new authority to, in effect, regulate intrastate services. The regulation of intrastate services is clearly granted to the states under Section 2(b) of the Communications Act of 1934 which is still in effect.

The inclusion of intrastate revenues in the determination of Federal USF charges may be discriminatory. As stated above Section 254(b) of the 1996 Act, only allows the FCC to include carriers that provide interstate services to contribute to the Federal USF. Any carriers that are only intrastate carriers can obviously not be required to contribute. Therefore, revenues from intrastate services provided by an interstate carrier would be subject to Federal USF charges while revenues from the exact same intrastate services provided by an intrastate carrier would not.

Telecommunications carriers may attempt to avoid Paying into the Federal USF through corporate restructuring. Carriers may split off interstate services from intrastate services through the creation of new corporate entities. If this is successful, the intrastate revenues of these carriers will be shielded from Federal USF support.

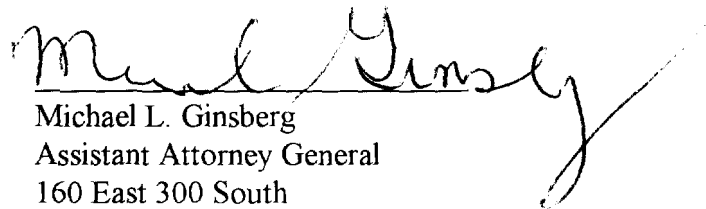
The Joint Board on Universal Service recommended that, for purposes of determining contributions to the Federal USF, any carrier that provides: "cellular telephone and paging, mobile radio, operator services, PCX, access (including SLCs), alternative access and special access,

packet switched, WATS, toll-free, 900, MTS, private line, telex, telegraph, video, satellite, international/foreign, intraLATA, and resale services” should be considered an interstate provider. Under this definition, virtually all telecommunications providers would be interstate carriers. If this broad definition were truly congress’ intent, then the terms “interstate” in Section 254(d) would be meaningless. In fact congress specifically states that “carriers that provide interstate telecommunications services” shall contribute to the Federal USF in Section 254(d) and “carrier(s) that provide intrastate telecommunications services” shall contribute to a State USF. The Joint Boards recommended interstate definition is not appropriate.

It is the position of the State of Utah that the prime responsibility for customer rates and thereby USF support should rest with the individual states that are closer the needs of their citizens. A large Federal USF will place significant financial demands on telecommunications providers and their customers. It will be much more difficult for states to impose additional USF burdens on those same customers in order to further the worthwhile goals identified by the state. It is therefore desirable from a policy standpoint that the Federal USF be relatively smaller and generally be intended to provide a backstop against unaffordable rates in support of individual state programs.

Based on the above the State of Utah respectfully requests that the FCC reject the proposal to include revenues from intrastate services in the calculation of Federal USF support and rely only on interstate revenue sources.

For the
Utah Public Service Commission and the
Utah Division of Public Utilities

A handwritten signature in black ink, appearing to read "Michael Ginsberg", with a long, sweeping flourish extending to the right.

Michael L. Ginsberg
Assistant Attorney General
160 East 300 South
Box 146751
Salt Lake City, Utah 84114-6751